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August 24, 2007

**VIA CERTIFIED MAIL NO. 7007 0710 0005 4860 4946**  
**RETURN RECEIPT REQUESTED**

Ms. LaDonna Castañuela  
Office of the Chief Clerk  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

Re: *In the Matter of the Application of Alvin Starr, Pamela Starr and Nathan Starr for  
Water Rights Permit No. WRPER 5920; TCEQ Docket No.: 2007-0014-WR;  
Before the Texas Commission on Environmental Quality*

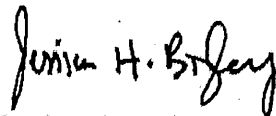
Dear Ms. Castañuela:

Please find the following enclosed herein:

- 1) Applicants' Response to Objections Filed to Applicants' Request for a Contested Hearing.

Please contact our firm should you have any questions or comments regarding this letter.

Sincerely,



Jessica H. Bigley  
Legal Assistant to Hutton W. Sentell

HWS/jb  
Enclosure

cc: Mailing List

CHIEF CLERKS OFFICE

2007 AUG 27 PM 4:03

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

## TCEQ DOCKET NO. 2007-0014-WR

IN THE MATTER OF THE  
APPLICATION OF ALVIN STARR,  
PAMELA STARR, AND NATHAN  
STARR FOR WATER RIGHTS  
PERMIT NO. WRPERM 5920§  
§  
§  
§  
§BEFORE THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

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CHIEF CLERKS OFFICE

APPLICANTS' RESPONSE TO OBJECTIONS  
FILED TO APPLICANTS' REQUEST FOR A  
CONTESTED HEARING

COME NOW, Alvin Starr, Pamela Starr, and Nathan Starr ("Applicants" or "the Starrs") and file this their Response to Objections filed to Applicants' Request for a Contested Hearing in the above-referenced matter. Applicants respectfully re-affirm their request that the Texas Commission of Environmental Quality (the "Commission" or "TCEQ") refer this matter to the State Office of Administrative Hearings ("SOAH").

## I. INTRODUCTION

Applicants applied to TCEQ on October 7, 2005, for a Water Use Permit to divert and use up to 320 acre-feet of water per year at a maximum diversion rate of 2.01 cfs (900gpm) from the East Fork of the Trinity River in the Trinity River Basin for agricultural purposes to irrigate 200 acres on a grass farm in Kaufman County, Texas.

The Executive Director ("ED") declared the Starr's application administratively complete on February 16, 2006. Applicants published their notice of water rights application on July 27, 2006, in the *Forney Messenger*, a newspaper of general circulation in Kaufman County. The comment and hearing request period ended on August 28, 2006. TCEQ received two hearing requests from water rights holders in the Trinity River Basin. Pursuant to TWC §11.134(b)(2), (3)(B), the Executive Director ("ED") recommended that the Commission deny the Starr's application in a letter dated October 17, 2006. The

Applicant requested a contested case hearing on November 8, 2006.

Applicants incorporate as re-assert the analysis of law and fact as set forth in the Office of Public Interest Counsel's ("OPIC") Response to Requests for Hearing, filed on August 13, 2007, in this matter. As set forth in the OPIC's pleading the Applicants have a right to a contested hearing as a matter of law.

Currently, the Forney Energy Center is permitted to discharge treated wastewater at a volume not to exceed a daily average flow of 4,000,000 gallons per day into the East Fork of the Trinity River in the Trinity River Basin. It is the Applicants position and belief that this "new water" in the basin has not properly been considered for availability to Applicants for their minuscule permit request for use and diversion. Moreover, in further support of their application, Applicants further attach hereto and incorporate herein as Exhibit "A" the TCEQ's Notice of Receipt of Application and Intent to Obtain Water Quality Permit Amendment to Permit No. WQ0004359000, issued June 21, 2007. Pursuant to Exhibit "A", if approved, at least 500,000 additional gallons per day of new water would be available in the East Fork of the Trinity River in the Trinity River Basin for use and diversion as a result of the Forney Energy Center's operations; this water would also constitute "new water" in the basin that would be available to Applicants for their use and diversion for agricultural purposes. As such, if Permit No. WQ0004359000 is approved, the technical data considered in the Applicants' permit application would again be materially incorrect.

Additionally, in further support of their permit request, Applicants attach hereto and incorporate herein as Exhibit "B" the letter recommendation of County Judge Wayne Gent, Kaufman County, dated November 6, 2006. As stated in the Honorable Judge Gent's letter, it would be in the best interest of Kaufman County for the TCEQ to grant the Applicants'

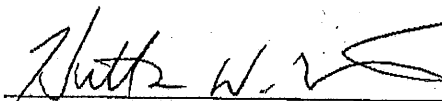
request for this small water permit.

## II. CONCLUSION

For the reasons set forth above, and as further set forth in the Office of Public Interest Counsel's response filed August 13, 2007, Applicants respectfully request that the Commission grant the contested case hearing requests of Applicants, the North Texas Municipal Water District and the City of Dallas and refer this matter to SOAH for a contested case hearing to determine whether the Starr's application meets the requirements of applicable law.

Respectfully submitted,

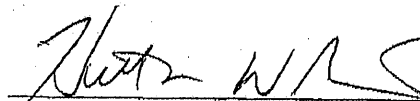
**THE LAW OFFICES OF  
JOSEPH E. ASHMORE, JR. P.C.**



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### CERTIFICATE OF SERVICE

This is to certify that all parties on the attached Mailing List have been sent a copy of the foregoing document in accordance with Commission rules this 24<sup>th</sup> day of August, 2007.



Hutton W. Sentell

CHIEF CLERK'S OFFICE

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TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

MAILING LIST  
ALVIN STARR, PAMELA STARR, AND NATHAN STARR  
TCEQ DOCKET NO. 2007-0014-WR

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FOR THE EXECUTIVE DIRECTOR:

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FOR OFFICE OF PUBLIC ASSISTANCE:

Bridget Bohac, Director  
Texas Commission on Environmental Quality  
Office of Public Assistance, MC-108  
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Fax: (512) 239-4007

FOR ALTERNATIVE DISPUTE  
RESOLUTION:

Kyle Lucas  
Texas Commission on Environmental Quality  
Alternative Dispute Resolution, MC-222  
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FOR THE CHIEF CLERK:

LaDonna Castanuela  
Texas Commission on Environmental Quality  
Office of Chief Clerk, MC-105  
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REQUESTERS:

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**TEXAS COMMISSION ON ENVIRONMENTAL QUALITY****NOTICE OF RECEIPT OF APPLICATION AND  
INTENT TO OBTAIN WATER QUALITY PERMIT AMENDMENT****PERMIT NO. WQ0004359000**

**APPLICATION.** FPLE Forney, L.P., 13770 West U.S. Highway 80, Forney, Texas 75126, which operates a combined cycle power generating facility, has applied to the Texas Commission on Environmental Quality (TCEQ) to amend Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0004359000 (EPA ID. No. TX0124419) to authorize increasing the Total Dissolved Solids discharge limitations and an increase in the discharge of treated wastewater to a volume not to exceed a daily average flow of 4,500,000 gallons per day. The facility is located at 900 West Broad Street, on the south side of U.S. Highway 80, 1.3 miles northwest of the intersection of Farm-to-Market Road 740 and U.S. Highway 80, northwest of the City of Forney in Kaufman County, Texas. The discharge route is from the plant site to the East Fork Trinity River. TCEQ received this application on May 21, 2007. The permit application is available for viewing and copying at Ellen Brooks West Memorial Library, 800 Farm-to-Market Road 741, Forney, Texas.

**ADDITIONAL NOTICE.** TCEQ's Executive Director has determined the application is administratively complete and will conduct a technical review of the application. After technical review of the application is complete, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments.

**PUBLIC COMMENT / PUBLIC MEETING.** You may submit public comments or request a public meeting on this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

**OPPORTUNITY FOR A CONTESTED CASE HEARING.** After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments, and the Executive Director's decision on the application, will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application.

**EXHIBIT A**

If comments are received, the mailing will also provide instructions for requesting reconsideration of the Executive Director's decision and for requesting a contested case hearing. A contested case hearing is a legal proceeding similar to a civil trial in state district court.

**TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST:** your name, address, phone number; applicant's name and proposed permit number; the location and distance of your property/activities relative to the proposed facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; and, the statement "[I/we] request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify an individual member of the group who would be adversely affected by the proposed facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

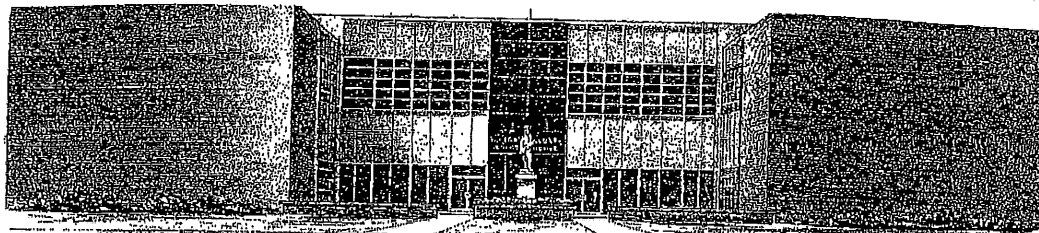
The Commission will only grant a contested case hearing on disputed issues of fact that are relevant and material to the Commission's decision on the application. Further, the Commission will only grant a hearing on issues that were raised in timely filed comments that were not subsequently withdrawn.

**MAILING LIST.** If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this specific application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. If you wish to be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

**AGENCY CONTACTS AND INFORMATION.** All written public comments and requests must be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. If you need more information about this permit application or the permitting process, please call TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. Si desea información en Español, puede llamar al 1-800-687-4040. General information about TCEQ can be found at our web site at [www.tceq.state.tx.us](http://www.tceq.state.tx.us).

Further information may also be obtained from FPLE Fomey, L.P. at the address stated above or by calling Philip A. Langworthy at 972-552-5114, Ext. 241.

Issuance Date: June 21, 2007



# KAUFMAN COUNTY

KAUFMAN, TEXAS 75142

**Wayne Gent**  
COUNTY JUDGE

November 6, 2006

**TO WHOM IT MAY CONCERN:**

This reference letter is provided at the written request of Alvin Starr, Pamela Starr, and Nathan Starr ("the Starrs"), who have asked me to serve as a reference on their behalf. It is my understanding that the Starrs are being considered by your agency for issuance of a Water Use Permit to divert and use not to exceed 320 acre-feet of water per year from the East Fork of the Trinity River, Trinity River Basin, for agricultural purposes in Kaufman County, Texas. They currently have such a permit for irrigation purposes in their turfgrass business, Starr Turfgrass.

Starr Turfgrass has been in business for 20 years. As County Judge for Kaufman County, I have had an opportunity to interact with and observe the Starrs in their Business endeavors here in Kaufman County. They have made a significant economic investment in their business enterprise on Highway 80 here in Kaufman County, and through their business they provide a vital economic boost for Kaufman County both in terms of employment opportunities and tax revenue.

The Starrs' turfgrass operation is situated on Highway 80 just south of the Duck Creek Wastewater Treatment Plant. It is my understanding that this wastewater facility is permitted to treat 30 million gallons per day, which treated effluent is discharged into Duck Creek, which then goes into the East Fork of the Trinity River and ultimately to the Trinity River. Likewise, the Forney Energy Center discharges treated wastewater at a volume not to exceed a daily average flow of 4,000,000 gallons per day. Forney Energy Center's discharge route is from the plant site to the East Fork Trinity River, right at the point where the Starrs plan to divert and use not to exceed 320 acre-feet of water per year in conjunction with their turfgrass business. In effect, the treated effluent from these facilities provides the primary water source from which the Starrs pull their irrigation water for their turfgrass business.

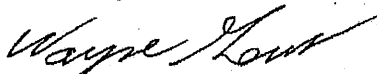
**EXHIBIT** B

The Starrs are also in the process of building a golf course on a different portion of the property located in Highway 80 and Lawson Road. The golf course will be a stand alone project that will not require use of water from the East Fork of the Trinity River that is the subject of the Water Use Permit. However, if the Water Use Permit is not granted, the water that was allocated for the golf course will instead be diverted to sustain and support the turfgrass farm already in operation. In other words, if the Water Use Permit is not granted, the planned golf course will not go forward. In turn, this will cost Kaufman County the benefit of a golf course that will attract numerous tourist and visitors, and the residual benefits derived therefrom, as well as a potentially large tax revenue generator and economic boost for Kaufman County.

Based upon the Starrs' outstanding business performance, their beneficial economic impact on Kaufman County and my understanding of the Water Use Permit for which they are applying, which in effect only seeks to divert a relatively small amount of wastewater from the Duck Creek Wastewater Treatment Plant and the Forney Energy Center, I sincerely hope that you will grant the Starrs request for a Water Use Permit. I am confident that they will continue to perform their business operations within the parameters of the water usage permit, and further, will remain a positive business and economic influence in Kaufman County.

If you would like to discuss this further, please feel free to contact me.

Sincerely,



Wayne Gent